



Tax Shelter Reporting and Compliance

- ❖ Registration
- ❖ List Maintenance
- ❖ Investor Disclosure



Regulations

- Final regulations filed with the Federal Register on 2/28/03 require:
 - Promoters to register confidential corporate tax shelters
 - Material Advisors to maintain and furnish information, including names of investors, concerning sales and transfers in potentially abusive tax shelters
 - Taxpayers to disclose large transactions that have delineated characteristics common to tax shelters



Registration

Announcement 2001-62

- Form 8264, *Application for Registration of a Tax Shelter*
- Mail to: Internal Revenue Service Center
Ogden, UT 84201
- Must register the shelter no later than the day of the first offering
- Tax Shelter Registration Numbers issued by Ogden Service Center



Required to Register

- Confidential Corporate Tax Shelters under IRC 6111(d)
- Transactions that exceed the tax shelter ratio and are a substantial investment under IRC 6111(c)



List Maintenance

Requires organizers and sellers (also known as material advisors) of potentially abusive tax shelters to:

- maintain lists of investors
- maintain copies of all offering material
- make this information available for inspection by the Service upon request



Investor Disclosure

Requires taxpayers to disclose their participation in “reportable transactions” by attaching Form 8886, *Reportable Transaction Disclosure Statement*, to the tax return and mail a copy to the Office of Tax Shelter Analysis.



Investor Disclosure

Disclosure is required for

1. Listed Transactions – same as or substantially similar to one of the types of transactions IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other published guidance.
2. Confidential Transactions – taxpayer's disclosure of information relating to the tax treatment or tax structure is limited



Investor Disclosure

(Continued)

3. Contractual Protections – taxpayer or a related party has a right to a full or partial refund of fees or such fees are contingent on realization of tax benefits by the taxpayer



Investor Disclosure (Continued)

4. **IRC Section 165 Loss Transactions –**
 - Limited to IRC Section 165 losses (gross concept)
 - \$10M in any single taxable year/\$20M in a combination of years – corporations other than S corporations, partnerships with corporations as partners
 - \$2M/\$4M – all other partnerships individuals, S corporations or trusts



Investor Disclosure

(Continued)

4. **IRC Section 165 Loss Transactions (cont'd)**
 - \$50K – IRC Section 988 transactions
 - Cumulative losses are determined by looking at all losses claimed in the taxable year the transaction is entered into and the 5 succeeding taxable years
 - Exceptions in Rev Proc 2003-24, 2003-11 IRB 1 (2/27/03)



Investor Disclosure

(Continued)

5. Book-Tax Differences

- Significant Book tax difference is a transaction where the amount for tax purposes of any item or items of income, gain expense, or loss from the transaction differs by more than \$10M on a gross basis from the amount of the item or items for book purposes in any taxable year.



Investor Disclosure

(Continued)

5. Book-Tax Differences (cont'd)

- Applies to entities with gross assets of \$250M or more at the end of any financial accounting period that ends with or within the entity's taxable year in which the transaction occurs and taxpayers that are reporting companies under the SEC Act of 1934.
- Exceptions in Rev Proc 2003-25, 2003-11 IRB 1 (2/27/03)



Investor Disclosure

(Continued)

6. Brief Holding Period Transactions –
Taxpayer holds an asset for 45 days or less and asset generates a tax credit of more than \$250,000



Contact Information

Office of Tax Shelter Analysis

LM:PFT:OTSA

1111 Constitution Avenue NW

Washington, DC 20224

Toll free (866) 775-7474

Fax (202) 283-8354

Email irs.tax.shelter.hotline@irs.gov